

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

POLY-AMERICA, L.P.,	§	
	§	
Plaintiff and Counter-Defendant,	§	
	§	
v.	§	CIVIL ACTION NO. 1:21-cv-08195-AJN
	§	
API INDUSTRIES, INC.,	§	
	§	
Defendant and Counter-Plaintiff.	§	

AGREED FINAL JUDGMENT

Plaintiff Poly-America, L.P. ("Poly-America") and Defendant API Industries, Inc. ("API") (together with Poly-America, the "Parties"), having resolved the matters in issue between them, agree to entry of final judgment in this matter as follows:

1. Poly-America filed Application Serial No. 85/174,910 (the "'901 Application") on November 11, 2010, seeking registration for the mark comprising the color orange as used on the drawstring portion of trash bags on the USPTO's Principal Register.
2. On June 15, 2011, Poly-America amended its '901 Application seeking registration on the USPTO's Supplemental Register.
3. The USPTO proceeded to register the '901 Application on September 13, 2011, as Supplemental Registration No. 4,027,254 (the "Mark") for "plastic trash bags" in International Class 16.
4. On November 11, 2015, API filed a Petition to Cancel Poly-America's Orange Drawstring Registration and instituted Cancellation No. 92062601 with the Trademark Trial and Appeal Board (the "TTAB"). API filed a First Amended Petition to Cancel on January 8, 2016.
5. On February 19, 2020, the TTAB issued its Final Decision, which granted API's Petition to cancel Poly-America's Mark on the grounds of genericness and functionality.

6. Thereafter, on March 19, 2020, Poly-America filed a Request for Reconsideration; however, the TTAB maintained its Final Decision and denied Poly-America's Request for Reconsideration on August 25, 2020.

7. On October 23, 2020, Poly-America timely filed the Complaint [Dkt. #1] seeking *de novo* review of the TTAB's Final Decision pursuant to the Lanham Act, 15 U.S.C. § 1071(b) in the United States District Court for the Eastern District of Texas on October 23, 2020. The case was subsequently transferred to the Southern District of New York.

8. On November 1, 2021, API filed its Original Answer and Counterclaims [Dkt. #32] seeking declaratory judgments "under the Trademark Act and the common law" that (a) Poly-America's Mark is invalid; and (2) API's use of the Mark would not infringe any rights of Poly-America.

9. The Parties now acknowledge and agree the TTAB's Final Decision should be affirmed in all aspects.

10. The Parties further acknowledge and agree API's Counterclaims should be hereby dismissed.

11. Counsel for all Parties consent to the terms of, and agree to the form of and entry of this Agreed Final Judgment.

THEREFORE, IT IS HEREBY ORDERED THAT:


1. The Clerk is directed to enter FINAL JUDGMENT in favor of API on Poly-America's appeal of the TTAB's Final Decision

2. The TTAB's Final Decision is AFFIRMED.

3. API's Counterclaims are hereby DISMISSED.

SO ORDERED

On this 5th day of July, 2022.


Hon. Jed Rakoff
United States District Court Judge

CONSENTED TO ON THIS 1ST DAY OF JULY, 2022 BY:

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---AND---

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